IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5360 of 2002
With
SPECIAL CIVIL APPLICATION Nos.5361, 5365, 5366, 5367, 9533, 9536, 9719, 9744, 10404 and 9638 to 9659 of 2002 and CIVIL APPLICATION Nos. 7130 to 7151 of 2002 in SPECIAL CIVIL APPLICATION Nos.9638 to 9659 of 2002.

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARSHADBHAI TRIBHOVANDAS PATEL

Versus

AHMEDABAD URBAN DEVELOPMENT AUTHORITY

Appearance:
Special Civil Application Nos.5360, 5361, 5365, 5366, 5367 of 2002
MR KS JHAVERI for Petitioner
MR DN PATEL for Respondent - AUDA
MR AD OZA, GOVERNMENT PLEADER with
MR MK DAGLI and Ms.Sonal Vyas, AGPs
for Respondent - Government
MR AJ PATEL with MR SHITAL R PATEL
for Respondent No. 3-5

Special Civil Application Nos.9533, 9536, 9719, 9744 and 10404 of 2002

MR KS JHAVERI for Petitioner
MR DN PATEL for Respondent - AUDA
MR AD OZA, GOVERNMENT PLEADER with
MR MK DAGLI and Ms.Sonal Vyas, AGPs
for Respondent - Government

Special Civil Application Nos.9638 to 9659 of 2002

MR AJ PATEL with MS ZA BHATT for petitioners
MR AD OZA, GOVERNMENT PLEADER with
MR MK DAGLI and Ms.Sonal Vyas, AGPs
for Respondent - Government
MR DN PATEL for Respondent - AUDA
MR KS JHAVERI for Respondent Nos.3 to 11

Civil Application Nos.7130 to 7151 of 2002

MR KS JHAVERI for Applicants
MS ZA BHATT for Respondent nos.1 - 3
MS VYAS, AGP for Respondent No.4
MR DN PATEL for Respondent No.5

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/10/2002

COMMON ORAL JUDGEMENT

#. In the facts and circumstances of the case, Civil Application Nos.7130 to 7151 of 2002 are allowed. Rule is accordingly made absolute. No costs. The office may accordingly amend the cause title of the respective special civil applications.

#. Rule. Mr.DN Patel, learned advocate, waives service of rule for the respondent - AUDA, Mr.AD Oza, learned Government Pleader with Mr.MK Dagli and Ms.Sonal Vyas, learned Assistant Government Pleaders, waive service of rule for the respondent - Government and Mr.A.J.Patel, learned advocate, waives service of rule for the respondents, which are proposed societies, and in Special Civil Application Nos.9638 to 9659 of 2002, Mr.Jhaveri waives service of rule on behalf of respondent Nos.3 to 11. With the consent of the parties, the matters are taken up for final hearing today.

#. Since common questions of law and facts are involved in this group of petitions, all these petitions are disposed of by this common order.

#. By filing these petitions, the petitioners have

prayed that, their claim may be considered by the Ahmedabad Urban Development Authority for the purpose of allotment of the land and for that preference may also be given to them with regards to the said allotment.

#. The petitioners herein, had applied for allotment of the land under the Town Planning Scheme. Some of the petitioners have applied since considerable time for allotment of the land and some of them have applied at a later point of time. On behalf of some of the petitioners, initially, various petitions were filed, being Special Civil Application No.11585 of 2001 and other cognate petitions. The said group of petitions was disposed of by this Court (Coram: M.S.Shah,J) by order dated 20.3.2002. At the relevant time, the grievance on the part of the aforesaid petitioners was that the Ahmedabad Urban Development Authority should consider their applications for allotment of the land expeditiously. While disposing of the said group of petitions, this Court (Coram : M.S.Shah,J) observed in paras 3 and 4 as under.:

"3. Mr.JM Barot learned advocate for the petitioners places reliance on the orders passed by this Court in identical matters, which are on record, being order dated 21.3.1998 (Coram: M.S.Shah,J) passed in Special Civil Application No.2133 of 1998 and cognate matters and order dated 14.3.2001 (Coram: A.L.Dave,J) passed in Special Civil Application No.1907 of 2001 and submits that the petitioners will apply for allotment of land to respondent No.1 - AUDA and such applications of the petitioners for allotment of land may be considered by AUDA as per Ahmedabad Urban Development Authority (Disposal of lands and other properties) Regulations, 1984 framed under section 119 of the Gujarat Town Planning and Urban Development Act, 1976. He further submits that the Court without going into the merits of the matter may direct the respondent - authority to consider such applications within stipulated time.

4. In view of the above, the interests of justice will be served in case respondent No.1 is directed to consider and decide the applications of the petitioners as and when the authority receives the same, in accordance with law as expeditiously as possible and preferably within two months from the date of receipt of writ of this Court or a certified copy of this order,

whichever is earlier."

#. After the aforesaid order of this Court in the aforesaid group of petitions, on behalf of the AUDA, a public advertisement was issued, inviting applications for the purpose of allotting the land in question. In the said advertisement, it was mentioned that, those societies, who had applied earlier, are also required to apply again and their earlier applications will not be considered for allotment of the land. The petitioners, therefore, have filed these special civil applications on the ground that, when their applications are required to be considered as per the order of this Court referred to earlier, they are not required to apply again and their applications, which had been made earlier, cannot be treated to have been taken out from the zone of consideration, especially, when considerable time has been taken by the AUDA in deciding the applications.

#. Mr.Jhaveri has, vehemently, argued that, if the AUDA had taken the decision earlier, then the petitioners, to whom he represent, would have got the land as per the policy, which was prevalent at the relevant time.

#. Mr.A.J.Patel, learned advocate, who is appearing for some of the proposed cooperative societies, who have applied on the basis of the advertisement dated 4.8.2001, contended that, the said cooperative societies have paid requisite deposit amount, which was required to be paid at the time of submitting the applications. However, it is not in dispute that, there is subsequent advertisement issued by the AUDA dated 23.5.2002, which is the last in point of time.

#. In the earlier group of petition, the learned Single Judge of this Court clearly directed the AUDA to consider and decide the applications of the petitioners therein for the purpose of allotment of the land as per the Ahmedabad Urban Development Authority (Disposal of Lands and Other Properties) Regulations, 1984, framed under Section 119 of the Gujarat Town Planning and Urban Development Act, 1976. However, before the land in question could be allotted, the said policy was further amended by way of Urban / Area Development Authorities (Disposal of Land and other properties) Regulation 2002. There is a complete procedure prescribed under the aforesaid Regulation for disposal of the land and as per the same, the lands are required to be allotted as per tender / auction, etc. Regulation 16 provides for disposal of land by inviting tenders or on applications, and Regulation 23 provides for Repeal and Saving clause.

Clause 23(3) of the said Regulation provides that, all matters of allotment of land/plots pending with the Committee/Authority/Government before sanction of these regulations shall be disposed of by the committee/authority in accordance with the provisions of these regulations. It is an admitted fact that, till today, no final decision is taken by the AUDA in the matter of allotment of the land in question and there are various claimants, who have applied either on the basis of the advertisement issued earlier or at a later point of time.

##. It is argued by Mr.Jhaveri that the claim of the petitioners, to whom he represent, are required to be considered as per the earlier Regulation of 1984 and not as per the existing policy, which came into effect in September, 2002. However, since no final decision is taken by the AUDA for disposing of the land, nor has any actual allotment been made in favour of any one, such contention cannot be accepted, because, in view of the said Repeal and Saving clause, allotment question is required to be considered as per the policy, which is in existence as on today.

##. Considering the aforesaid aspect, in my view, the AUDA has not done anything wrong by inviting the tenders, as, the land in question is required to be disposed of as per the policy, which is in existence as on today, as, that is the only procedure for disposing of the land in question. This Court cannot direct the AUDA to dispose of the land contrary to the said policy. It is, no doubt, true that, this Court (Coram: M.S.Shah,J) has already given directions to the AUDA to consider the claim of those petitioners, who had approached this Court at an earlier point of time. Therefore, there is substance in the say of Mr.Jhaveri to the effect that, those petitioners, who had approached this Court earlier and whose applications are pending since long before the AUDA, cannot be compelled to apply again under the guise of the advertisement to the effect that all the earlier applications will be treated as cancelled and that, such claimants will also be required to apply again. Such type of insistence on the part of the AUDA is not justified, as, it may go against the direction given by this Court regarding considering the applications, of those who had approached this Court earlier, on its own merits.

##. Under these circumstances, it is directed that, those petitioners, who had applied earlier, and, whose applications are pending with the AUDA before the new

policy came into force, will not be obliged to apply again and their applications shall be considered and they will be permitted to participate in the auction proceedings along with others, who have applied in pursuance of the advertisements. However, their claim can be considered only if they deposit the required amount as per the earlier advertisement as well as comply with other conditions as provided in the said advertisement dated 23.5.2002. In the facts and circumstances of the case, time for depositing the said amount is extended upto 15.11.2002, by which, the petitioners may deposit the amount in question, and, ultimately, the claim of the petitioners, who have applied as per the old policy and who are also governed by the order of this Court dated 20.3.2002, is required to be considered by the AUDA without insisting for filing fresh applications and their claim may be considered along with the applicants, who have applied by paying necessary amount in pursuance of the advertisement dated 23.5.2002. It is needless to say that, the AUDA will take decision strictly in accordance with law and as per the existing policy.

##. Mr.Jhaveri, however, submitted that, the AUDA may be directed to give preference to those applicants, who have applied earlier, i.e. prior to change of policy. However, this Court cannot give any such direction, as, it is ultimately for the AUDA to decide, whether any such preference can be given or not and to decide the claim of the applicants as per the Rules and existing policy. Since the issue about the disposal of the land is pending since long, the AUDA is directed to complete such proceedings of allotment of land and the said exercise may be finalised as early as possible and preferably by 31.1.2003.

##. Subject to what is stated above, these petitions are partly allowed. Rule is made absolute to the extent, as indicated above, with no order as to costs.

(P.B.Majmudar,J)
(pathan)